

**Judge McMahon**

Christopher M. Schierloh (CS-6644)  
**CASEY & BARNETT, LLC**  
317 Madison Avenue, 21<sup>st</sup> Floor  
New York, New York 10017  
(212) 286-0225  
Attorneys for Plaintiff

**08 CIV 6070**



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**FIREMAN'S FUND INSURANCE CO. a/s/o  
RISONA, INC.,**

Plaintiff,

**COMPLAINT**

**08 Civ.**

- against -

**EXPLORE AIRTRANS SERVICES, LLC,**

Defendant.

-----X

Plaintiff, by its attorneys, CASEY & BARNETT, LLC, for its Complaint, alleges upon information and belief, as follows:

**JURISDICTION**

1. This is a claim for cargo damage to a shipment transported pursuant to the provisions of the Carmack Amendment, 49 U.S.C. §§ 11706, 14706 *et al.* Jurisdiction over Explore Airtrans Services, Inc. is predicated upon 28 U.S.C. § 1331 and 28 U.S.C. § 1337.

## **PARTIES**

2. Plaintiff, Fireman's Fund Insurance Company, is a corporation with a place of business located at 1 Chase Manhattan Plaza, 37<sup>th</sup> Floor, New York, New York 10005, and is the cargo insurer for the consignment of 99 boxes of perfume owned by Risona, Inc. ("Risona") the shipper of the cargo carried by defendant, Explore Airtrans Services, LLC, as more fully described below.

3. Defendant, Explore Airtrans Services, LLC is a business entity having a place of business located at 123 Pennsylvania Avenue, Gate 5, South Kearny, New Jersey, 07032, and at all times relevant was, and still is, doing business in this jurisdiction and was at all times acting in the capacity of a common carrier of goods by road.

4. Plaintiff brings this action on its own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the said consignment, as their respective interests may ultimately appear, and Plaintiff is entitled to maintain this action.

## **RELEVANT FACTS**

5. In June 2006, Risona, Inc. engaged the services of defendant Explore Airtrans Services, LLC to transport a consignment consisting of 99 boxes of perfume on 3 skids from Port Washington, New York to Dallas, Texas.

6. On or about June 26, 2006 the aforementioned consignment, then being in good order and condition, was delivered into the custody and control of Explore Airtrans Services, LLC for transportation to Laredo, Texas, pursuant to Explore Airtrans, LLC bill of lading number 23165.

7. On or about July 5, 2006, the consignment was delivered to the consignee, whereupon, it was ascertained that 1 skid containing 1008 bottles of perfume of perfume was missing and/or stolen.

8. Upon determining that the 1 skid of perfume was missing, Risona, Inc. submitted a claim for the loss to its cargo insurer, Fireman's Fund Insurance Company. Following its investigation into the matter, the insurer paid the insurance claim and became subrogated to the rights of Risona, Inc.

9. The loss of the aforementioned perfume did not result from any act or omission on the part of plaintiff or shipper, but to the contrary, was the result in whole or in part, of the negligence, gross negligence, breach of contract, breach of bailment, and/or fault of defendant.

10. As a result of defendants' negligence, gross negligence, and breach of its contract of carriage, and/or breach of bailment, plaintiff has sustained damages in the amount of \$30,000, as nearly as presently can be determined, no part of which has been paid, although duly demanded.

WHEREFORE, Plaintiff prays:

1. That process in due form of law may issue against defendants citing them to appear and answer all and singular the matters aforesaid;
2. That judgment may be entered in favor of plaintiff against defendants for the amount of plaintiff's damages, together with interest and costs and the disbursements of this action; and
3. That this Court grant to plaintiff such other and further relief as may be just and proper.

Dated: New York, New York  
July 2, 2008  
299-736

CASEY & BARNETT, LLC  
Attorneys for Plaintiff

By: 

Christopher M. Schierloh (CS-6644)  
317 Madison Avenue, 21<sup>st</sup> Floor  
New York, New York 10017  
(212) 286-0225